

SENATE BILL REPORT

SB 6311

As of January 21, 2008

Title: An act relating to reform of competency evaluation and restoration procedures.

Brief Description: Revising procedures for competency evaluations and competency restoration.

Sponsors: Senator Hargrove.

Brief History:

Committee Activity: Human Services & Corrections: 1/15/08.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Kevin Black (786-7747)

Background: A competency evaluation is required whenever it appears that a criminal defendant may be incompetent to stand trial. If the evaluator finds that the defendant is incompetent, and the case is a felony or a serious misdemeanor, the court must order the defendant to undergo competency restoration treatment. State law does not specify a time limit for completion of a competency evaluation; the criminal case is stayed during all competency proceedings. The court may order the competency evaluation to take place at the state hospital or on an outpatient basis in the jail or community. The competency evaluation includes an evaluation of the future dangerousness of the offender, and may include a diminished capacity evaluation and an insanity evaluation. If the defendant cannot be restored to competency within time periods prescribed by law, the criminal case must be dismissed, and if the case was a felony or serious misdemeanor, the defendant must be transported to the state hospital for civil commitment proceedings. The state may then file a petition committing the defendant to a secure hospital for a period of 90 days for a misdemeanor charge or 180 days for a felony charge, which may be renewed at successive civil commitment hearings for as long as the defendant meets civil commitment criteria..

Summary of Bill: A time limit is established for completion of competency evaluations when the defendant is in custody. The limit is 21 days for evaluations that take place in the jail, and 30 days for evaluations that take place at the state hospital. All evaluations must take place in the jail, unless the court finds good cause for the evaluation to take place at the state hospital, or the evaluator determines that an in-hospital evaluation is necessary. The future dangerousness portion of the evaluation is eliminated. Diminished capacity and insanity evaluations are separated from competency evaluations; diminished capacity evaluations will not be performed by the state unless an independent expert finds that diminished capacity is present. If charges are dismissed because the defendant cannot be restored to competency, the

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defendant must be transferred to the state hospital within seven days for a felony charge, or three days for a serious misdemeanor charge. Statements made by the defendant during the competency evaluation are excluded from evidence, unless the defendant testifies or introduces contradictory evidence at trial. The length of competency restoration treatment available in a misdemeanor charge is changed from a variable period of 14-29 days to a total of 20 days.

Appropriation: None.

Fiscal Note: Requested on December 28, 2007.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is the product of a task force that started in late 2006, which met about ten times. It involved judiciary, prosecution, defense, Eastern and Western State Hospitals, Regional Support Network representatives, jail representatives, and allied systems. It was facilitated by a national forensic competency expert. The bill removes inefficiencies from the competency system, and will shorten time mentally ill defendants remain in jail in both felony and misdemeanor cases. Having time frames for evaluations will increase consistency from court to court. It will be good to have a specific competency restoration period for misdemeanor cases; however, a longer restoration period may be appropriate than what is specified in the bill. In jail evaluations are not quickie evaluations, but prevent mentally ill defendants from languishing in jail.

CON: We want to work out differences. The legislation has worthy goals, but may not produce desired quality of evaluations in serious cases. Prosecutors want input on picking an expert, and where the evaluation will take place. Alternative language is needed concerning the admissibility of statements. There is disagreement among parties as to whether the bill will shorten jail stays or lengthen them.

Persons Testifying: PRO: Richard Kellogg, Mental Health Division, Department of Social and Health Services; Michael Finkle, Seattle City Attorney; Honorable Ronald Kessler, King County Superior Court Judge.

CON: Tom McBride, Washington Association of Prosecuting Attorneys; Craig Adams, Pierce County Sheriffs Office.